



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

MEMORANDUM

SUBJECT: Asbestos; Proposed Significant New Use Rule
(Tier 3; SAN 6677; RIN 2070-AK45; EPA-HQ-OPPT-2018-0159)
– **ACTION MEMORANDUM**

FROM: Tanya Hodge Mottley, Director
National Program Chemicals Division

TO: Jeffery T. Morris, Director
Office of Pollution Prevention and Toxics

PURPOSE

Attached for your signature is a Federal Register notice for a proposed significant new use rule for asbestos under Section 5(a)(2) of the Toxic Substances Control Act.

DEADLINE

No statutory or court-ordered deadlines apply to this action; however, the proposed SNUR is intended to be signed and posted on the EPA website on May 31, 2018 along with the problem formulation document for asbestos.

OVERVIEW

Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes the EPA to determine that a use of a chemical substance is a “significant new use.” The EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once the EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice to the EPA at least 90 days before manufacturing (including importing) or processing the chemical substance for that intended activity (15 U.S.C. 2604(a)(1)(B)(i)). TSCA further prohibits such manufacturing (including importing) or processing from commencing until the EPA has conducted a review of the notice, made a determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). Additionally, Section 5(a)(5) of TSCA (15 U.S.C. 2604(a)(5)) authorizes the EPA to require notification for the import or processing of a chemical substance as part of an article or category of articles under TSCA section 5(a)(1) (15 U.S.C. 2604(a)(1)(A)(ii)), if the EPA makes an affirmative finding in a rule under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification. General SNUR provisions are found at 40 CFR part 721, subpart A.

Summary of the Proposed Action

The EPA is proposing a significant new use rule for asbestos as defined under the Asbestos Hazard Emergency Response Act (TSCA Title II, Section 202); the “asbestiform varieties of six fiber types – chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite.” The significant new use of asbestos (including as part of an article and components of articles) is manufacturing (including importing) or processing for certain uses identified by the EPA as no longer ongoing. The agency has found no information indicating that the following uses of asbestos are ongoing, and therefore, the following uses are subject to the proposed SNUR: adhesives, sealants, and roof and non-roof coatings; arc chutes; beater-add gaskets; extruded sealant tape and other tape; filler for acetylene cylinders; high-grade electrical paper; millboard; missile liner; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; and any other building material (other than cement).

Persons subject to the SNUR would be required to notify the EPA at least 90 days before commencing any manufacturing (including importing) or processing of asbestos (including as part of an article) for a significant new use. The required notification initiates the EPA’s evaluation of the conditions of use associated with the intended use within the applicable review period. Manufacturing (including importing) and processing (including as part of an article) for the significant new use may not commence until the EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

Background

The EPA is separately conducting a risk evaluation of asbestos under its conditions of use, pursuant to TSCA section 6(b)(4)(A). The Frank R. Lautenberg Chemical Safety for the 21st Century Act amended TSCA in June 2016. The new law includes statutory requirements related to the risk evaluations of current conditions of use for existing chemicals. Based on the 2014 update of the EPA’s TSCA Work Plan for Chemical Assessments, in December of 2016, the EPA designated asbestos as one of the first 10 chemical substances subject to the agency’s initial chemical risk evaluations (81 FR 91927), as required by TSCA section 6(b)(2)(A).

In order to identify ongoing uses of asbestos in the United States to define the scope of the risk evaluation, the EPA conducted extensive research, convened stakeholder meetings, and requested and considered public comment. The EPA will conduct the risk evaluation for asbestos based on the conditions of use, which have been identified through scoping and refined during problem formulation as the following: imported raw bulk chrysotile asbestos for the fabrication of diaphragms for use in chlorine and sodium hydroxide production, sheet gaskets for use in titanium dioxide chemical production, brake blocks for use in oil drilling, aftermarket automotive brakes/linings and other vehicle friction products, other gaskets and packing, cement products, and woven products. These ongoing uses and other asbestos uses not specifically identified are not considered significant new uses and would not require a significant new use notification submission to the agency.

Regardless of the outcome of the risk evaluation pursuant to TSCA section 6(b)(4)(A), the EPA is concerned about the potential for adverse health effects of asbestos based on established sound scientific data indicating that asbestos is a known carcinogen. Since its peak usage, the national consumption of asbestos has declined approximately 99 percent, and asbestos has not been mined or otherwise produced in the United States since 2002. The EPA believes any significant new use of asbestos (including as part of an article and as identified in Table 2 of the proposed rule) could increase the duration and magnitude of human and environmental exposure to the substance, reverse the declining trend of national import volumes of the substance, and reintroduce exposure scenarios that have become obsolete over the past

several decades. It is imperative that the EPA be notified of any intended significant new use of asbestos (including as part of an article and as identified in Table 2 of the proposed rule) and be provided the opportunity to evaluate such proposed new use.

ANTICIPATED PUBLIC AND STAKEHOLDER RESPONSE

The proposed rule will be of interest to multiple stakeholders including industry, government agencies, non-governmental organizations, academia, public health organizations, environmental groups, and the general public who are interested in asbestos regulations and/or are concerned about human and environmental exposures to asbestos.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) National trends have shown a consistent and large decline in the use of asbestos in commerce. Based on extensive agency research of ongoing uses of asbestos and considering the availability of safer and affordable alternatives, the EPA believes industry is continuing to voluntarily phase out the manufacturing (including importing) and processing of asbestos (including as part of an article).

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Based on public comments received over the past year regarding the uses of asbestos and the scope of the risk evaluation, the EPA expects interest in agency actions related to asbestos to continue.

INTERNAL DEVELOPMENT AND REVIEW PROCESS

This action was developed with participation from the Office of General Counsel, Office of Policy, Office of Research and Development, Office of Enforcement and Compliance Assurance, Office of Air, and Office of Water.

OMB TRANSACTION

On March 19, 2018, the Office of Management and Budget determined that this proposed rule is not a significant regulatory action under Executive Orders 12866 and 13563. As such, this proposed rule was not reviewed by OMB.

IMPACTS

Potentially Regulated Entities

Potentially affected entities may include, but are not limited to the following list of industries identified by North American Industrial Classification System codes:

- Construction (NAICS code 23)
- Manufacturing (NAICS codes 31 – 33)
- Wholesale Trade (NAICS code 42)
- Transportation (NAICS code 48)

Economic Impacts

The EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers (including importers) and processors of asbestos (including as part of an article and components thereof). In the event that a significant new use notice is submitted, costs are estimated to be less than \$10,000 per SNUN submission for large business submitters and \$8,000 for small business submitters. In addition, for persons exporting a substance that is the subject of a SNUR, a one-time

notice to the EPA must be provided for the first export or intended export to a particular country, which is estimated to be approximately \$96 per notification. However, asbestos is already subject to a TSCA section 6(a) rule (40 CFR part 763, subpart G and I) that triggers the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), (see also 40 CFR 721.20), and the agency is not proposing to require export notifications for articles containing asbestos as articles are generally excluded from the TSCA section 12(b) export notification requirements. Therefore, the EPA assumes no additional costs under TSCA section 12(b) for this proposed rule.

Small Entity Impacts

Analysis supporting the rulemaking indicates that this action would not have a significant adverse economic impact on a substantial number of small entities.

Recordkeeping and Reporting Impacts

The information collection requirements associated with existing chemical SNURs are already approved under OMB control number 2070-0038 (EPA ICR No. 1188) and the information collection activities associated with export notifications are already approved under OMB control number 2070-0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the agency, the annual burden is estimated to be less than 100 hours per response, and the burden is estimated to be reduced for submitters who have already registered to use the electronic submission system. Since asbestos is already subject to a TSCA section 6(a) rule (40 CFR part 763, subpart G and I) that triggers the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b); see also 40 CFR 721.20) and because the EPA is not proposing to require export notifications for articles, the EPA assumes there is no cost or burden associated with export notifications under the proposed rule.

Governmental Impacts

The EPA has determined that the proposed rule will not significantly or uniquely affect state, local, or tribal governments.

STAKEHOLDER INVOLVEMENT

This action did not directly involve stakeholders. However, the related outreach conducted in 2016 and 2017 during the early stages of the risk evaluation for asbestos involved numerous meetings and consultations with the American Chemistry Council, stakeholders from the chemical manufacturing industry (including the chlor-alkali industry), the International Association of Drilling Contractors, the Motor and Equipment Manufacturers Association, federal government agencies, non-government organizations, environmental groups, and public citizens. The agency also sought and received public comment on both the *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Asbestos*, released in February 2017 and the *Scope of the Risk Evaluation for Asbestos*, released in June 2017.

PEER REVIEW

There were no major scientific or technical products supporting this action as defined by the EPA's Peer Review Handbook. Therefore, no support documents were submitted for peer review. **CONTACT** Please direct any questions regarding the Federal Register notice to the proposed rule workgroup lead, Robert Courtnage at 202-566-1081 or Courtnage.Robert@epa.gov.

RECOMMENDATION

I recommend that you sign the attached Federal Register notice.

Attachments